TITLE 86: REVENUE

PART 100
INCOME TAX

Section 100.2160 Research and Development Credit (IITA 201(k))

a) *For tax years ending after July 1, 1990 and prior to December 31, 2003, and beginning again for tax years ending on or after December 31, 2004, a taxpayer shall be allowed a credit against the tax imposed by IITA Section 201(a) and (b) for increasing research activities in this State* (IITA 201(k)).

b) *The credit allowed shall be equal to 6½% of the qualifying expenditures for increasing research activities in this State* (IITA Section 201(k)).

c) Not all "research" will qualify for the credit. Nor will every expenditure associated with research qualify for the credit. Qualified research is defined in IRC Section 41(d). Qualifying expenditures means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under IRC Section 41 and which are conducted in this State.

1) IRC Section 41(b) defines "qualifying research expenses" as the sum of the in-house research expenses and the contract research expenses paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer.

2) Qualifying expenditures also include basic research payments. Basic research payments are defined in IRC Section 41(e).

d) Qualifying expenditures for increasing research activities in this State means the excess of qualifying expenditures for the taxable year in which incurred over qualifying expenditures for the base period. Qualifying expenditures for the base period means the average of the qualifying expenditures for each year in the base period.

e) Base period means the 3 taxable years immediately preceding the taxable year for which the determination is being made. For purposes of computing the average qualifying expenditures for the base period:

1) For taxable years after a taxpayer has succeeded to the tax items of a corporation under IITA Section 405(a), qualifying expenditures incurred by the corporation during the base period shall be deemed to be qualifying expenditures of the taxpayer.

2) If the taxpayer incurred no qualifying expenditures during a base period year, the qualifying expenditures for that year are zero, even if the taxpayer was not in existence or conducting any business in Illinois during that year.

3) If the taxpayer was doing business in this State for only part of a base period year, the qualifying expenditures for that year shall be equal to the qualifying expenditures actually incurred, multiplied by 365 and divided by the number of days in the portion of the taxable year during which the taxpayer was doing business in this State.

4) Qualifying expenditures incurred in taxable years in which the taxpayer did not qualify for the credit, including taxable years ending on or after December 31, 2003 and prior to December 31, 2004 must be included in the computation of qualifying expenditures for the base period.

f) *Any credit in excess of the tax liability for the taxable year may be carried forward to offset the income tax liability of the taxpayer for the next 5 years or until it has been fully utilized, whichever occurs first* (IITA Section 201(k)), provided that no credit earned in a tax year ending prior to December 31, 2003 may be carried forward to any year ending on or after December 31, 2003. If an unused credit is carried forward to a given year from 2 or more earlier years, that credit arising in the earliest year is applied first. If a tax liability for the given year remains, the credit from the next earliest year is applied. Any remaining unused credit or credits can be carried forward to the next following year in which a tax liability exists. However, the credit can only be carried forward 5 years from the year in which the taxpayer incurred the expense for which the credit was given. Any unused credit is then forfeited.

g) Combined returns. In the case of taxpayers filing combined returns, Section 100.5270(d) of this Part details the manner in which the credit is determined.

h) Pass-through of credits to partners and Subchapter S corporation shareholders.

1) For tax years beginning on and after January 1, 1999, partners and shareholders of Subchapter S corporations *shall be allowed a credit under this subsection to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code.* No inference shall be drawn from the enactment of Public Act 91-644, which expressly allows this pass-through of credits, in construing IITA Section 201(k) for tax years beginning prior to January 1, 1999.

2) Repeal and re-enactment of the credit. Due to the repeal of the credit for taxable years ending on or after December 31, 2003, and the re-enactment of the credit for taxable years ending on or after December 31, 2004:

A) A partner or shareholder may not claim a credit passed through from a partnership or Subchapter S corporation for any taxable year of the partner or shareholder ending on or after December 31, 2003 and prior to December 31, 2004, even if the credit was earned in a taxable year of the partnership or Subchapter S corporation ending prior to December 31, 2003.

B) No credit may be earned by a partnership or Subchapter S corporation for a taxable year ending on or after December 31, 2003 and prior to December 31, 2004, and passed through to a partner or shareholder, even if the partner or shareholder would have reported the credit for a taxable year ending on or after December 31, 2004.

(Source: Amended at 32 Ill. Reg. 872, effective January 7, 2008)